

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 507

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

AN ACT

RELATING TO INSPECTION OF PUBLIC RECORDS; ALLOWING EMAIL AND  
FACSIMILE REQUESTS TO INSPECT PUBLIC RECORDS; REQUIRING A  
RECORD CUSTODIAN'S SUPERVISOR OR DESIGNEE TO REVIEW DECISIONS  
ABOUT WHAT RECORDS ARE EXEMPT FROM INSPECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 14-2-7 NMSA 1978 (being Laws 1993,  
Chapter 258, Section 4, as amended) is amended to read:

"14-2-7. DESIGNATION OF CUSTODIAN--DUTIES.--Each public  
body shall designate at least one custodian of public records  
who shall:

A. receive and respond, subject to the provisions  
of Subsection A of Section 14-2-9 NMSA 1978, to requests to  
inspect public records;

B. provide proper and reasonable opportunities to

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1 inspect public records;

2 C. provide reasonable facilities to make or furnish  
3 copies of the public records during usual business hours; and

4 D. post in a conspicuous location at the  
5 administrative office of each public body a notice describing:

6 (1) the right of a person to inspect a public  
7 body's records;

8 (2) procedures for requesting inspection of  
9 public records;

10 (3) procedures for requesting copies of public  
11 records;

12 (4) reasonable fees for copying public  
13 records; and

14 (5) the responsibility of a public body to  
15 make available public records for inspection."

16 Section 2. Section 14-2-8 NMSA 1978 (being Laws 1993,  
17 Chapter 258, Section 5) is amended to read:

18 "14-2-8. PROCEDURE FOR REQUESTING RECORDS.--

19 A. Any person wishing to inspect public records may  
20 submit an oral [~~or~~], hard copy written, facsimile or email  
21 request to the custodian. However, the procedures set forth in  
22 this section shall be in response to a hard copy written,  
23 facsimile or email request. The failure to respond to an oral  
24 request shall not subject the custodian to any penalty.

25 B. Nothing in the Inspection of Public Records Act

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1 shall be construed to require a public body to create a public  
2 record.

3 C. A hard copy written, facsimile or email request  
4 shall provide the name, address and telephone number of the  
5 person seeking access to the records and shall identify the  
6 records sought with reasonable particularity. No person  
7 requesting records shall be required to state the reason for  
8 inspecting the records.

9 D. A custodian receiving a hard copy written,  
10 facsimile or email request shall permit the inspection  
11 immediately or as soon as is practicable under the  
12 circumstances, but not later than fifteen days after receiving  
13 a written request. If the inspection is not permitted within  
14 three business days, the custodian shall explain [~~in writing~~]  
15 in the same manner as the request was made when the records  
16 will be available for inspection or when the public body will  
17 respond to the request. The three-day period shall not begin  
18 until the hard copy written, facsimile or email request is  
19 delivered to the office of the custodian.

20 E. In the event that a hard copy written, facsimile  
21 or email request is not made to the custodian having possession  
22 of or responsibility for the public records requested, the  
23 person receiving the request shall promptly forward the request  
24 to the custodian of the requested public records, if known, and  
25 notify the requester in the same manner as the request was

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1 made. The notification to the requester shall state the reason  
2 for the absence of the records from that person's custody or  
3 control, the records' location and the name and address of the  
4 custodian."

5 Section 3. Section 14-2-9 NMSA 1978 (being Laws 1993,  
6 Chapter 258, Section 6) is amended to read:

7 "14-2-9. PROCEDURE FOR INSPECTION.--

8 A. Requested public records containing information  
9 that is exempt and nonexempt from disclosure shall be separated  
10 by the custodian prior to inspection. The custodian's  
11 supervisor, or the supervisor's designee, shall review the  
12 separation to ensure that only public records properly exempt  
13 from the right to inspect are not made available for inspection  
14 and the nonexempt information shall then be made available for  
15 inspection. If necessary to preserve the integrity of computer  
16 data or the confidentiality of exempt information contained in  
17 a database, a partial printout of data containing public  
18 records or information may be furnished in lieu of an entire  
19 database.

20 B. A custodian:

21 (1) may charge reasonable fees for copying the  
22 public records, unless a different fee is otherwise prescribed  
23 by law;

24 (2) shall not charge fees in excess of one  
25 dollar (\$1.00) per page for documents eleven inches by

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1       seventeen inches in size or smaller;

2                       (3) may require advance payment of the fees  
3 before making copies of public records;

4                       (4) shall not charge a fee for the cost of  
5 determining whether any public record is subject to disclosure;  
6 and

7                       (5) shall provide a receipt, upon request."

8       Section 4. Section 14-2-10 NMSA 1978 (being Laws 1993,  
9 Chapter 258, Section 7) is amended to read:

10       "14-2-10. PROCEDURE FOR EXCESSIVELY BURDENSOME OR BROAD  
11 REQUESTS.--If a custodian determines that a hard copy written,  
12 facsimile or email request is excessively burdensome or broad,  
13 an additional reasonable period of time shall be allowed to  
14 comply with the request. The custodian shall provide [~~written~~]  
15 notification to the requester in the same manner the request  
16 was made within fifteen days of receipt of the request that  
17 additional time will be needed to respond to the [~~written~~]  
18 request. The requester may deem the request denied and may  
19 pursue the remedies available pursuant to the Inspection of  
20 Public Records Act if the custodian does not permit the records  
21 to be inspected in a reasonable period of time."

22       Section 5. Section 14-2-11 NMSA 1978 (being Laws 1993,  
23 Chapter 258, Section 8) is amended to read:

24       "14-2-11. PROCEDURE FOR DENIED REQUESTS.--

25               A. Unless [~~a written~~] the request has been

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1 determined to be excessively burdensome or broad, a hard copy  
2 written, facsimile or email request for inspection of public  
3 records that has not been permitted within fifteen days of  
4 receipt by the office of the custodian may be deemed denied.  
5 The person requesting the public records may pursue the  
6 remedies provided in the Inspection of Public Records Act.

7 B. If a hard copy written, facsimile or email  
8 request has been denied, the custodian shall provide the  
9 requester with a hard copy written, facsimile or email  
10 explanation of the denial. The ~~written~~ denial shall:

- 11 (1) describe the records sought;
- 12 (2) set forth the names and titles or  
13 positions of each person responsible for the denial; and
- 14 (3) be delivered or mailed to the person  
15 requesting the records within fifteen days after the request  
16 for inspection was received.

17 C. A custodian who does not ~~deliver or mail a~~  
18 ~~written~~ provide an explanation of denial pursuant to this  
19 section within fifteen days after receipt of a ~~written~~  
20 request for inspection is subject to an action to enforce the  
21 provisions of the Inspection of Public Records Act and the  
22 requester may be awarded damages. Damages shall:

- 23 (1) be awarded if the failure to provide a  
24 timely explanation of denial is determined to be unreasonable;
- 25 (2) not exceed one hundred dollars (\$100) per

1 day;

2 (3) accrue from the day the public body is in  
3 noncompliance until a [~~written~~] denial is issued; and

4 (4) be payable from the funds of the public  
5 body."

6 Section 6. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2009.

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